

Senate Bill No. 494

Passed the Senate August 25, 2004

Secretary of the Senate

Passed the Assembly August 12, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 23004.1 of the Government Code, and to amend Section 14124.791 of the Welfare and Institutions Code, relating to health services.

LEGISLATIVE COUNSEL'S DIGEST

SB 494, Escutia. Health services.

(1) Existing law prescribes procedures under which a provider, beneficiary, or the Director of Health Services may bring an action or claim against a 3rd party who is liable for services rendered to a beneficiary under the Medi-Cal program. Existing law provides that, subject to a prior right of recovery of the director, a provider who has rendered services to a beneficiary because of an injury for which a 3rd party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for the services provided thereto against any judgment, award, or settlement obtained by the beneficiary or the director against that 3rd party if the provider has made a full reimbursement of any fees paid to the department for those services.

This bill would revise these 3rd-party claim procedures. The bill would revise the provider lien procedures to instead authorize the lien for the reasonable and necessary charges for services provided to the beneficiary against the portion of any judgment, award, or settlement relating to past medical expenses in the action or claim brought against a 3rd party.

(2) Existing law provides procedures under which, in any case in which a 3rd person is liable to pay for health services provided by a county to an injured or diseased person, the county may recover from that 3rd person or be subrogated to any right or claim that the injured or diseased person, including identified parties in interest, have against that 3rd person. Under these procedures the county's right of action abates during the pendency of an action brought for damages against the 3rd person by the injured or diseased person and continues as a first lien against any judgment recovered by the injured or diseased person.

This bill would provide that the county's right of action would continue under this provision as a first lien subordinate to a lien right of the Director of Health Services and, in addition, against



any settlement, compromise, arbitration award, mediation settlement, or any other recovery obtained by the injured or diseased person. The bill would also provide that a county enforcing a lien under these provisions is a provider for purposes of (1).

The people of the State of California do enact as follows:

SECTION 1. Section 23004.1 of the Government Code is amended to read:

23004.1. (a) Subject to Section 23004.3, in any case in which the county is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment, including prostheses and medical appliances, to a person who is injured or suffers a disease, under circumstances creating a tort liability upon some third person to pay damages therefor, the county shall have a right to recover from that third person the reasonable value of the care and treatment so furnished or to be furnished, or shall, as to this right, be subrogated to any right or claim that the injured or diseased person, his or her guardian, personal representative, estate, or survivors has against that third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished.

(b) The county may, to enforce rights established under subdivision (a), institute and prosecute legal proceedings against the third person who is liable for the injury or disease in the appropriate court, either in its own name or in the name of the injured person, his or her guardian, personal representative, estate, or survivors. This action shall be commenced within the period prescribed in Section 340 of the Code of Civil Procedure. In the event that the injured person, his or her guardian, personal representative, estate, survivors, or any of them brings an action for damages against the third person who is liable for the injury or disease, the county's right of action shall abate during the pendency of that action, and continue as a first lien, subordinate to the Director of Health Services' lien rights pursuant to Section 14124.74 of the Welfare and Institutions Code, against any judgment, settlement, compromise, arbitration award, mediation settlement, or any other recovery obtained by the injured or diseased person, his or her guardian, personal representative,



estate, or survivors, against the third person who is liable for the injury or disease, to the extent of the reasonable value of the care and treatment so furnished or to be furnished. When the third person who is liable is insured, the county shall notify the third person's insurer, when known to the county, in writing of the lien within 30 days following the filing of the action by the injured or diseased person, his or her guardian, personal representative, estate, or survivors, against the third person who is liable for the injury or disease. However, failure to so notify the insurer shall not prejudice the claim or cause of action of the injured or diseased person, his or her guardian, personal representative, estate, or survivors, or the county.

SEC. 2. Section 14124.791 of the Welfare and Institutions Code is amended to read:

14124.791. (a) The Legislature finds and declares that providers of emergency medical care furnish a vital public service of great benefit to all Californians by furnishing emergency medical services to all without regard to the ability to pay, as required by existing law. The Legislature further finds and declares that granting providers lien recovery rights increases a provider's incentive to participate in the Medi-Cal program thereby improving a Medi-Cal beneficiary's access to care. It is the intent of the Legislature to respond to the invitation of the California Supreme Court in *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, to permit providers to recover their reasonable and necessary charges while protecting Medi-Cal beneficiaries' rights to recover full damages from responsible third-party tortfeasors, and to preclude tortfeasors from receiving the benefit of the Medi-Cal program at the expense of providers, beneficiaries, and taxpayers. The Legislature further finds and declares that allowing providers to recover payment from responsible third-party tortfeasors, subject to the provider's full refund to the State Department of Health Services, furthers the intent of the Medi-Cal program to be the payer of last resort, results in savings to the state, and assists the state in carrying out its obligations to identify and recover funds from third parties that are responsible to pay for the care provided to Medi-Cal beneficiaries.

(b) Subject to the director's prior right of recovery, a provider who has rendered services to a beneficiary because of an injury for which a third party is or may be liable and who has received



payment under the Medi-Cal program shall be entitled to a lien for the reasonable and necessary charges for services provided to the beneficiary against the portion of any judgment, award, or settlement relating to past medical expenses obtained by the beneficiary or the director against that third party. A provider may recover upon the lien only upon proof that the provider has made a full refund of all payments made by the Medi-Cal program to the provider for these services. Proof of refund of all payments made to the department shall be in the form of a copy of the check to the department and appropriate representation that the check was mailed to the department.

(c) If either the beneficiary or the director brings an action or claim against the third party, the party bringing the action shall, within 30 days of bringing the action, give written notice to any provider who is eligible to file a lien under subdivision (b) of, to the extent known, the name and address of each third party and the name and address of each insurance carrier that has insured the third party against the liability and, to the extent applicable, the name of the action and court or state or local agency in which the action or claim is brought. Notice shall be given by personal service or registered mail, and proof of service shall be filed in the action or claim.

(d) (1) The lien shall become perfected when the provider sends a written notice containing the name and address of the injured person, the name and location of the provider, and the amount claimed as reasonable and necessary charges, to the beneficiary's attorney, if known, and if not known, to the beneficiary or the beneficiary's legal representative and to the director.

(2) If notice is given to the beneficiary and the provider subsequently has notice that the beneficiary has legal representation, the provider shall give written notice to the beneficiary's attorney. The failure to give notice to the beneficiary's attorney pursuant to this paragraph shall not invalidate the lien.

(3) The written notice required by this subdivision shall be sent by registered mail.

(4) The amount claimed in the notice, or so much of that amount as can be satisfied from any final judgment, compromise, or settlement agreement after paying any other medical provider



lien the priority for which is statutorily required, shall be deemed to be included within any judgment, award, or settlement unless the judgment, award, or settlement expressly allocates a lesser amount. Any recovery on the lien shall be limited to that portion of the judgment, award, or settlement constituting compensation for past medical expenses.

(e) Where a provider is entitled to file a lien under this section, the third party may not use the amount paid by Medi-Cal to reduce the amount of its liability.

(f) If the beneficiary has filed a third-party action or claim, the court where the action or claim was filed shall have jurisdiction over a dispute between the provider and the beneficiary regarding the amount of a lien asserted pursuant to this section that is based upon an allocation of damages contained in a settlement or compromise of the third-party action or claim. If no third-party action or claim has been filed, any superior court in California where venue would have been proper had a claim or action been filed shall have jurisdiction over the motion. The motion may be filed as a special motion and treated as an ordinary law and motion proceeding and subject to regular motion fees. The reimbursement determination motion shall be treated as a special proceeding of a civil nature pursuant to Part 3 (commencing with Section 1063) of the Code of Civil Procedure. When no action is pending, the person making the motion shall be required to pay a first appearance fee. When an action is pending, the person making the motion shall pay a regular law and motion fee.

(g) In any motion filed pursuant to subdivision (f), all of the following shall apply:

(1) The provider asserting a lien pursuant to this section and the beneficiary shall be made a party to the motion and either the beneficiary or the provider may file the motion. In cases where the third-party claim was tried to a verdict or judgment, the motion shall be heard by the trial judge, if available. In cases where an action has been filed and settled or otherwise resolved prior to verdict or judgment, the motion shall be heard by the judge to whom the matter was assigned, or, if no judge was assigned or the assigned judge is unavailable, in the regular law and motion department or by a judge assigned to hear the matter. When no action has previously been filed, the motion shall be assigned and



heard pursuant to the regular law and motion procedures in the court where the motion is filed.

(2) Within 14 days of a request from a provider, the beneficiary shall serve a true and correct copy of those portions of the settlement document upon which the asserted allocation is based that are relevant to the determination motion. If not requested by a provider, a true and correct copy of those portions of the settlement document on which the asserted allocation is based that are relevant to the determination motion shall be served with the motion.

(3) (A) If the beneficiary is the moving party, notice of the motion shall be addressed to any counsel representing the provider on the lien, if known, and if not known, to the provider at the provider's address as shown on the notice of lien. If the provider is the moving party, notice of the motion shall be addressed to the beneficiary's counsel, if known. If the beneficiary is not represented by counsel, the notice of motion shall be mailed to the beneficiary by registered mail. Proof of service in compliance with this subdivision shall be filed with the court.

(B) Notice required under this paragraph shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(4) If the beneficiary is represented by counsel, the beneficiary shall bear the burden of proof as to the fairness of the allocation and the burden of producing evidence, by declaration or other written form, as to the manner in which the allocation was made and the evidentiary basis for the allocation. If the beneficiary is not represented by counsel, the party making the motion shall bear the burden of proof as to the fairness of the allocation and the burden of producing evidence, by declaration or other written form, as to the manner in which the allocation was made and the evidentiary basis for the allocation.

(5) In determining the fairness of the allocation, the court shall consider the relationship of damages for past medical expenses to the total damages claimed and the total amount of the settlement.

(6) The court shall issue its findings, decision, and order, which shall be considered the final determination of the parties' rights and obligations with respect to the provider's lien, unless the settlement is contingent on an acceptable allocation of the settlement proceeds, in which case, the court's findings, decision,



and order shall be considered a tentative determination. If the beneficiary does not serve notice of a rejection of the tentative determination, which shall be based solely upon a rejection of the contingent settlement, within 30 days of the notice of entry of the court's tentative determination, subject to further consideration by the court pursuant to paragraph (7), the tentative determination shall become final.

(7) If the beneficiary does not accept the tentative determination, which shall be based solely upon a rejection of the contingent settlement, any party may subsequently seek further consideration of the court's findings upon application to modify the prior findings, decision, or order, based on new or different facts or circumstances. The application shall include an affidavit showing what application was made before, when, and to what judge, what order or decision was made, and what new or different facts or circumstances, including a different settlement, are claimed to exist. Upon further consideration, the court may modify the allocation in the interest of fairness and for good cause.

(h) No claim authorized by this section shall be permitted to the extent that the claim would reduce the director's right to recover pursuant to Section 14124.78. However, the department's receipt of the provider's refund pursuant to subdivision (b) shall extinguish the director's claim for the same services. Section 1008 of the Code of Civil Procedure does not apply to any motion filed pursuant to subdivision (f).

(i) Any person, firm, or corporation, including, but not limited to, an insurance carrier, who receives notice of a lien asserted pursuant to this section and who makes any payment to the injured person, or to his or her attorney, heirs, or legal representative, for the injuries the beneficiary sustained, after receipt of this notice, without paying to the provider the amount the provider is entitled to receive as payment on its lien, shall be liable to the provider for that amount.

(j) For purposes of this section, "reasonable and necessary charges" means the usual, customary, and reasonable charges for medical services in the geographic region where the services were provided, when these services were medically necessary to treat the injuries allegedly caused by a third-party tortfeasor. The beneficiary has the burden of proof in a third-party action or claim to establish the reasonable value of medical and hospital expenses,



reasonably required and actually provided for the treatment of the beneficiary as the result of a third-party's conduct.

(k) The amount paid to the provider by Medi-Cal shall not be considered in the determination of the amount of a provider's lien or in the determination of the amount of the third-party tortfeasor's liability to the beneficiary. This provision overturns *Hanif v. Housing Authority of Yolo County* (1988) 200 Cal.App.3d 635, to the extent that case is inconsistent with this provision. This provision is declarative of existing law as stated in *Helfend v. Southern California Rapid Transit District* (1970) 2 Cal.3d 1.

(l) When a final judgment in the third-party claim includes a special finding by a judge, jury, or arbitrator that the beneficiary was partially at fault, the provider's lien shall be reduced by the same comparative fault percentage by which the beneficiary's recovery for past medical expenses was reduced.

(m) At the request of the beneficiary, the court or arbitrator in the third-party action or claim shall provide for special findings with respect to compensation allocated to past medical expenses.

(n) The provider's lien shall be reduced by the pro rata amount commensurate with the beneficiary's reasonable attorney's fees and costs in accordance with the common fund doctrine. The amount of the reduction in the provider's lien pursuant to this subdivision shall accrue solely to the benefit of the beneficiary and shall not constitute additional attorney's fees and costs owed or payable to the beneficiary's attorney.

(o) If any provision of this section, or the application of any provision of this section to any person, firm, corporation, or other entity or to any circumstance or situation, shall be held invalid, the remaining provisions of this section shall not be affected thereby, and shall be given effect.

(p) Subdivision (e) shall have no effect on the rights of parties or public agencies under Section 985 of the Government Code.

(q) As used in this section "provider" shall include, but is not limited to, a county enforcing a lien pursuant to Section 23004.1 of the Government Code.



Approved _____, 2004

Governor

